

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015080871

ORDER DENYING MOTION FOR
STAY PUT

On August 19, 2015, Student filed a motion for stay put. On August 25, 2015, Chino Valley Unified School District filed an opposition. On August 26, 2015, Student filed his motion for stay put a second time, with unidentified and unauthenticated exhibits attached.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

The Individuals with Disabilities Education Act mandates that the “location” of services be identified in an educational placement. (20 U.S.C. § 1414(d)(1)(A)(i)(VII).) California’s implementing regulations define a “specific educational placement” as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs” (Cal. Code Regs., tit. 5,

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

§ 3042, subd. (a).) A school district “must ensure that..[t]he child’s placement...[i]s as close as possible to the child’s home.” (34 C.F.R. § 300.116(b)(3).) The school district “must ensure that...[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.” (34 C.F.R. § 300.116(c).)

DISCUSSION

Student’s motion for stay put alleges that his October 9, 2014 IEP offered placement and services in the 1st through 3rd grade special day class at Glenmead Elementary School. The IEP team agreed to reconvene in May 2015 to determine which program Student would attend for the 2015-2016 school year, when he would be in 4th grade. In August 2015, Student received a letter from District stating that he would be attending the 4th through 6th grade SDC at Student’s home school, Oak Ridge Elementary School. Student seeks a stay put placement in the 4th through 6th grade SDC at Glenmead, rather than Oak Ridge. Student’s motion is not supported by a sworn declaration, and an incomplete copy of his October IEP.

District’s opposition is supported by the sworn declaration of District’s special education director, who states that the Glenmead class is full, and that the SDC class at Oak Ridge contains the same components as the SDC class at Glenmead.

The IDEA mandates that a student with special needs be educated in the school that he or she would attend if nondisabled, which for Student is Oak Ridge. Student failed to submit a complete authenticated copy of his last agreed upon and implemented IEP, so it cannot be determined why Student’s education and related services could not be provided at his home school in the 2014-2015 school year. Student also failed to submit a sworn declaration establishing that the October 2015 IEP is his last agreed upon and implemented IEP, or that a classroom exists at Glenmead to provide the education and services called for in that IEP for the 2015-2016 school year. Student’s submission of incomplete information is not remedied by District’s opposition declaration, which does not address Student’s IEP or his educational program.

Accordingly, Student’s motion for stay put is denied.

IT IS SO ORDERED.

DATE: August 31, 2015

/s/

ALEXA HOHENSEE
Administrative Law Judge
Office of Administrative Hearings